110-276

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 1227.

CHARLES H. KRIPPENDORF, APPELLANT,

vs.

WILLIAM L. HYDE ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED DECEMBER 10, 1883.

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1 Pleas of the circuit court of the United States for the district of Indiana, begun and holden at the United States court-house, in the city of Indianapolis, in said district, on the first Tuesday in November, in the year of our Lord one thousand eight hundred and eighty-three, before the Honorable William A. Woods, judge of the district court of the United States for said district, and ex-officio judge of said circuit court.

CHARLES H. KRIPPENDORF
vs.
WILLIAM L. HYDE, HENRY G. HYDE, ADAM BURGERT, George W. Hart, Elisha P. Dodge, Henry B. Little, John W. Burt, Fred. Packard, Augustus W. Clapp, Richmond Clapp, William H. Clapp, Walter W. Dennett, Charles W. Copeland, Nathan B. Cox, George W. Hart, Diddien Catellien, Frank Catellien, Lawrence Allison, Isaac Allison, Savory C. Hathaway, Rufus A. Soule, Herbert A. Harrington, Cornelius Morrow, William O. Walker, George Strong, John Carroll, Walter M. Brewster, Thomas W. Harris, Joshua R. Pearl, William Weilson, James Cousins, Thomas Cousins, James Cousins, Jr., Joseph B. Cousins, Cornelius Walker, 2 Samuel Dunbar, Thomas C. Smith, John James, F. E. Lark, Ellis W. Ridpath, Leonidas H. Ridpath, Edward S. Norris, Charles F. Cox, Barker C. Young, John G. Gardiner, Francis S. White, The National Advertising Company, Hugh Maguire, Jesse K. Green, William C. Herrick, William F. Freeman, Charles Heiser, Thomas Emmerson, James F. Emmerson, Edwin E. Emmerson, Harriet E. Ide, Oscar F. Wilson, E. K. Alexander, Joseph K. Hayes, Jr., A. W. Goge, Robert S. Foster, United States Marshal, for said District of Indiana, Lewis C. Frey, and Jacob C. Maag.

No. 7705.
Chancery.

Be it remembered that heretofore, to wit, on the 19th day of October, A. D. 1883, at the May term of said court, before the Honorable William A. Woods, judge as aforesaid, the following proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by Rankin D. Jones, Esq., and Messrs. Burns & Denny, his solicitors, and files his bill of complaint herein, in the words following, to wit:

Charles H. Krippendorf, brings this bill of complaint against William L. Hyde, Henry G. Hyde, Adam Burgert, George W. Hart, Elisha P. Dodge, Henry B. Little, John W. Burt, Fred. Packard, Augustus W. Clapp, Richmond Clapp, William H. 3 Clapp, Walter W. Dennett, Charles W. Copeland, Nathan B. Cox, George W. Hart, Diddien Catellien, Frank Catellien,

Lawrence Allison, Isaac Allison, Savory C. Hathaway, Rufus A. Soule, Herbert A. Harrington, Cornelius Morrow, William O. Walker, George Strong, John Carroll, Walter M. Brewster, Thomas W. Harris, Joshua R. Pearl, William Weilson, James Cousins, Thomas Couisins, James Cousins, Jr., Joseph B. Cousins, Cornelius Walker, Samuel Dunbar, Thomas C. Smith, John James, F. E. Lark, Ellis W. Ridpath, Leonidas H. Ridpath, Edward S. Norris, Charles F. Cox, Barker C. Young, John G. Gardiner, Francis S. White, The National Advertising Company, Hugh Maguire, Jesse K. Green, William C. Herrick, William F. Freeman, Charles Heiser, Thomas Emerson, James F. Emerson, Edwin E. Emerson, Harriet E. Ide, Oscar F. Wilson, E. K. Alexander, Joseph K. Hayes, Jr., A. W. Goge, Robert S. Foster, United States marshal for said district of Indiana, Lewis C. Frey, and Jacob C. Maag, defendants.

And your orator represents unto your honors that heretofore, to wit, on the —— day of September, in the year of 1882, the defendants, William L. Hyde and Henry G. Hyde, as partners, doing business under the firm name of "Hyde Brothers," began a suit upon the law side of this honorable court against the defendants, Lewis C. Frey and Jacob C. Maag, who, at the time, did business as partners under the firm name of "Frey & Maag," to recover upon an account for goods and merchandise theretofore sold them by the said plaintiffs.

4 Your orator further represents that contemporaneously with the commencement of said suit the said Hyde Brothers sued out a writ of attachment, and caused the same to be levied on a certain stock of boots situate in the city of Indianapolis.

That said writ of attachment was levied by the defendant, Robert S. Foster, as marshal of said court, who caused the same to be appraised by two disinterested appraisers, as provided by the statutes of the State of Indiana and adopted by the rules of this honorable court; that said goods were by said appraisers appraised at the sum of thirteen thousand one hundred and sixty-five dollars and sixty-four cents ($13,165.64.)

Your orator further represents unto your honors that, claiming to have been the owner of said stock of boots and shoes, and to have been in the possession thereof at the time the said writ of attachment was so levied upon the same, he caused to be executed to said defendant, Robert S. Foster, as said marshal, a delivery bond pursuant to the provisions of section 924 of the revised statutes of said State of Indiana, and the said defendant, Foster, thereupon caused said stock of goods to be delivered to your orator subject to the conditions and provisions of said section.

Your orator further represents that upon the institution of said suit he was, on his own petition, admitted as a party defendant to the same, and set up his claim and title to said stock of goods by way of defense to said proceeding in attachment; that subsequently, upon the motion of the plaintiffs therein, his name as a party

5 defendant was, *over* his objections, stricken from the record

without prejudice to his right to assert his claim in some other form.

Your orator further represents that the other defendants above named, except the defendant, Foster, and the defendants, Frey & Maag, holding claims against the said defendants, Frey & Maag, filed the same under the claim of the said "Hyde Brothers," and thereby became parties to said attachment proceedings.

Your orator further represents that the issues joined between the said several claimants and the said defendants, Frey & Maag, upon the several accounts, and upon the matters alleged for the issuing of said writ of attachment, were afterwards, to wit, on the 18th day of September, 1883, submitted to a jury, who afterwards returned a verdict in favor of the said several plaintiffs and against said defendants, Frey & Maag, upon both of said issues.

Your orator further represents that afterwards, to wit, on the 1st day of October, 1883, this honorable court rendered judgment upon the said verdict against the said Lewis C. Frey and Jacob C. Maag and in favor of the said several claimants as follows, to wit:

In favor of William L. Hyde and Henry G. Hyde, for $1,708.13; in favor of Adam Burgert and George W. Hart, for the sum of $1,180.63; in favor of Elisha P. Dodge and Henry Little, for $2,285.41; in favor of John W. Burt and Fred. Packard for $880.22; in favor of Augustus W. Clapp, Richmond Clapp and
6 Walter W. Dennett, for $1,068.11; in favor of Savory C. Hathaway, Rufus A. Soule and Herbert A. Harrington, for $1,105.95: in favor of Cornelius Morrow, for $2,142.72; in favor of William O. Walker, George Strong and John Carroll, for $447.74; in favor of Walter M. Brewster, for $611.62; in favor of Thomas M. Harris, John R. Pearl and William Neilson, for $815.61; in favor of Charles W. Copeland, for $558.88; in favor of Nathan Cox and George W. Hart, for $275.96; in favor of Diddier Costellier and Frank Costellier, for $1,021.38; in favor of Lawrence Allison and Isaac Allison, for $582.10; in favor of James Cousins, Thomas Cousins, James Cousins, Jr. and Joseph B. Cousins, for $606.30; in favor of Cornelius Walker, for $163.80; in favor of Dunbar, Smith and Company, for $577.30; in favor of Ellis W. Ridpath and Leonidas H. Ridpath, for $404.10; in favor or Edward L. Norris, for $271.50; in favor of Hugh Maguire and Jesse K. Green, for $421.78; in favor of William C. Herrick and William F. Freeman, for $249.20; in favor of Cox, Young and Gardinier, for $227.87; in favor of Francis E. White, for $932.71; in favor of Charles Heiser, for $387.15; in favor of the National Advertising Company, for $111.50; in favor of Thomas Emerson and James F. Emerson, for $170; in favor of Harriet E. Ide and Oscar F. Wilson, for $1,375 76; in favor of E K. Alexander, for $206.60; and and in favor of Joseph K. Hays, Jr. and A. W. Goge, for $355.69; all with costs of suit; and it was at the same time ordered and adjudged by the court that the said attached property be
7 sold as the property of the said Frey and Maag, by the said

marshal, for the purpose of satisfying the said several judgments, &c.

That the said defendants, Frey and Maag, after the return of said verdict; but before the rendition of the said several judgments, and before the order for the sale of said property to satisfy the same was entered, filed their motion for a new trial of the issues in said cause, which said motion is still pending and undisposed of. That by the terms of said judgment, an order for the sale of said attached property, the same, nor any part thereof, cannot be sold to satisfy any of said claims or judgments until after the said motion for a new trial shall have been heard and ruled upon by the court in said cause.

8 Your orator further represents unto your Honors, that upon said property being delivered to him, he, while still a party defendant to said suit, used and disposed of a large portion thereof, and was therefore unable to return the same to the said marshal, upon the rendition of the said judgments; but he further represents that in lieu thereof he has paid to the defendant Robert S. Foster, who is still said marshal, the appraised value thereof, to wit: thirteen thousand one hundred and sixty-five dollars and sixty four cents.

Your orator further represents unto your honors that at the time said attachment proceedings were begun, he was the owner of all the property upon which said writ of attachment was levied, and which was delivered to him by virtue of the execution of said bond, and which is now represented by the said thirteen thousand one hundred and sixty five dollars and sixty-four cents, in the hands of the defendant Foster, and that neither the said Frey nor Maag had at that time any interest whatever therein.

Your orator further represents that said sum of money is still in the hands of the defendant Foster as such marshal, no part thereof having been by him distributed or paid out. That your orator has notified said defendant that said money belongs to him, and demanded that the same be paid to him accordingly, but the said defendant refuses to pay the same to him, and threatens to,

9 and unless restrained by the order of this court, will pay the same over to the said several claimants, all of whom are non-residents of the State of Indiana, in accordance with the judgment of this court rendered in said cause.

And inasmuch as your orator can have no relief, except in this honorable court, to the end therefore that the said several defendants, may, if they can, show why your orator should not have the relief herein prayed for, your orator prays that they, and each of them, be required to make full, true, direct, and perfect answers, but not under oath, to all the matters hereinbefore stated and charged as fully and particularly as if separately interrogated thereto.

And your orator prays that the defendant, Robert S. Foster, be restrained by the order of this honorable court from paying over

or distributing any part of said fund until the final hearing of this cause, and that upon the final hearing, it be adjudged to belong to your orator, and ordered paid over to him accordingly.

May it please your honors to grant unto your orator a writ of provisional, as well as perpetual, injunction issuing out of and under the seal of this honorable court, commanding and enjoining the said defendant Foster from disposing of said fund until the final hearing of this cause, and upon the final hearing, each and every of the defendants from in any manner interfering therewith.

And may it further please your honors to grant unto your
10 orator the writ of subpœna, issuing out of and under the seal of this honorable court, commanding them by a day certain, and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises, and to stand and abide such order and decree as may be made against them.

CHARLES H. KRIPPENDORF,
Complainant.

RANKIN D. JONES and BURNS & DENNY,
Solicitors.

STATE OF INDIANA, }
Marion County, } *ss:*

David V. Burns, agent and attorney for the complainant, Charles H. Krippendorf, being duly sworn upon his oath says, that the matters stated in the foregoing bill, so far as they fall within his own knowledge, are true, and so far as they are stated upon information he believes them to be true.

DAVID V. BURNS.

And at the same time come the defendants, by Messrs. Rooker and Hatch, and William and Lew Wallace, their solicitors, and waive the issuance and service of process, and enter their appearance herein.

And afterwards, to wit, on the 1st day of November, A. D. 1883, at the May term of said court, in recess thereof, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, Nathan B. Cox and George W.
11 Hart, by L. B. Swift, Esq., their solicitor, and enter their appearance herein.

And afterwards, to wit, on the 5th day of November, A. D. 1883, at the May term of said court, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, by William and Lew Wallace, their solicitors, and file their demurrer to the bill, and plea to part of bill herein, in the words following, to wit:

The demurrer of the defendants, except Lewis C. Frey and Jacob I. Maag, to the bill of complaint of Charles H. Krippendorf, the above-named complainant:

The defendants, except Lewis C. Frey and Jacob I. Maag, by protestation, not confessing all or any of the matters and things in the complainant's bill of complaint contained, to be true in such matter and form as the same is therein set forth and alleged, do demur to the whole of the said complainant's bill; and for cause of demurrer to said bill the said defendants show that the said bill doth not contain any matter of equity whereon this court can ground any decree, or give to the said complainant any such relief as prayed for against these defendants, or any of them, and that it is against the course and practice and not within the jurisdiction of this court to interfere or afford such relief against the execution of the writ and judgment of attachment.

And for a further cause of demurrer to the complainant's
12 bill the said defendants show that the said bill doth not contain any matter of equity whereon this court can ground any decree or give to the said complainant any such relief as prayed for against these defendants or any of them, and that it is against the course and practice and not within the jurisdiction of this court to interfere or afford such relief against the execution of the writ and judgment of attachment.

And for a further cause of demurrer to the complainant's bill, the said defendants show that the said complainant has not, by his said bill, shown such a case as entitles him to such relief as thereby prayed, inasmuch as it does not thereby appear that there was any impediment to an action at law being brought by the said complainant to establish his right; and that if these defendants to the property seized under the writ of attachment in the action aforesaid, and taken by the said defendant under the bond recited in the said bill, or that in any trial or action verdict or judgment has been hitherto sustained by the said defendant for that purpose, or that there was, previous to or at the time the said bill was filed, or now is, an authentic record of such right.

And for further cause of demurrer to the said complainant's bill, these defendants show that the said complainant has not, by his said bill, show such a case as entitles him to such relief as aforesaid as is thereby prayed, inasmuch as it appears in said bill that the said complainant could have brought an action at law to establish his right to the property seized under the writ of
13 attachment in the action aforesaid at the time or immediately after the execution of the bond recited in the said complainant's bill of complaint, and before all or any part of such property had been sold or converted into money, and does not appear in such bill that there was any impediment to such action, or any excuse or reason why the said complainant should not have brought the same and established his title by an action at law, as he should

have done, his remedy in such action at law being perfect, complete, and adequate; and it is against the course in practice, and not within the jurisdiction of this court to interfere or afford relief in such matters until the right of the complainant is established by such an action at law.

Wherefore, and for divers other good causes of demurrer in the said bill, the said defendants do demur to the same, and humbly demand a judgment of this court, whether they, or any of them, shall be compelled to make any further or other answer to said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

ROOKER & HATCH,
WILLIAM & LEW WALLACE,
Of Counsel.

And the said defendants, William L. Hyde, Henry G. Hyde, Elisha P. Dodge, Henry B. Little, John W. Burt, Fred Packard, Augustus W. Clapp, Richmond Clapp, William H. Clapp, Walter W. Dennett, Savory C. Hathaway, Rufus A. Soule, Herbert
14 A. Harrington, Cornelius Morrow, William O. Walker, George Strong, John Carroll, Walter M. Brewster, and Robert S. Foster, marshal for district of Indiana, not waiving their said several demurrers, but wholly relying thereon as to so much of the said bill as seeks to have the fund aforesaid adjudged to belong to the said complainant, and to be ordered to be paid to him accordingly, and also to so much of said bill as prays an injunction against the said defendants upon the final hearing, restraining them perpetually from interfering with said fund, do plead to so much of said bill as asks for a provisional injunction against the defendant, Robert S. Foster, and as asks an order of this honorable court upon Robert S. Foster, restraining him from paying over or distributing the fund mentioned in said bill, or from disposing of said fund until the final hearing of this cause.

And for plea to so much and such parts of said bill, these defendants, by protestation, not confessing or acknowledging the matters and things in said bill set forth and alleged to be true in such manner and form as the same are thereby and therein set forth and alleged, say:

That they expressly deny each and every allegation contained in said bill, except those hereinafter particularly admitted to be true and controverted; and they particularly deny that the said complainant is the owner, and entitled to the fund mentioned and described in his said bill.

15 But these defendants admit that "Hyde Brothers" instituted an action at law in this honorable court against Frey & Maag, and that they sued out a writ of attachment in said action and cause, and that the same was levied on the stock of goods mentioned in said bill; and that others, the very plaintiffs mentioned in said bill filed complaint, affidavits, and bonds, in and under the

said action and writ of attachment of the said Hyde Brothers, as alleged in the said complainant's bill, and that judgments were rendered in said action in favor of all said plaintiffs therein, in the amounts and upon the dates specified and set forth in said complainant's bill, and that the attachment in such action was sustained, and that the said stock of goods was therein ordered to be sold for the satisfaction of the said several judgments.

That the said marshal, having seized said stock of goods under said writ of attachment, delivered the same to the said complainant, and in consideration of such delivery to him, the said complainant executed to the said marshal a bond as alleged in said complainant's bill herein, conditioned for the return of said property for the appraised value thereof. And these defendants further admit that the appraised value of said stock of goods was the same alleged in said complainant's bill, to wit, thirteen thousand one hundred and sixty-five dollars and sixty-four cents; and that on the day named, the said complainant paid such sum to the said marshal, and that the said marshal now has the same in his possession.

16 But these defendants say that no writ of injunction has issued from this honorable court restraining the said marshal from distributing the said sum of money amongst the said judgment creditors; that these defendants, and the said Robert S. Foster, marshal as aforesaid, have waived the issuing and service of subpœna in this action, by agreement with the said complainant, but have not waived the issuing of such injunction.

And these complainants say that no such temporary injunction or restraining order has issued from this court to said marshal, and the same should not be issued; the said marshal should not be restrained from distributing said sum of money because these defendants say that the said complainant has not yet filed a bond in this action to support such temporary or provisional injunction.

And these defendants further show unto your Honors that in the event such restraining order or provisional injunction is issued, and the said Robert S. Foster is restrained from distributing said sum, great loss and damage is threatened unto these defendants and their co-defendants in this action, in this, to wit, that they will be without the use of said fund pending this action, and will be put to much cost and expense and attorneys' fees, and in other respects.

And these defendants further say that a motion for a new trial of their said action at law in which said writ of attachment was issued, is now pending for decision, and by the order and

17 judgment of the court in such action, execution on such judgment cannot issue until such motion for a new trial is decided.

All of which matters and things these defendants do aver to be true, and they plead the same to so much of the said bill as is hereinabove particularly mentioned, and pray the judgment of this honorable court whether they ought to be required to make any other or further answer to so much of the said bill as is hereinbefore pleaded

to, and pray to be hence dismissed with their costs and charges in that behalf most wrongfully sustained.

ROOKER & HATCH,
WILLIAM & LEW WALLACE,
Attorneys for Defendants.

UNITED STATES OF AMERICA, *District of Indiana,* } *set:*

Lew Wallace, of counsel for defendants in the above cause, hereby certify that in his opinion the demurrer and plea to the bill in such cause is well founded in point of law.

LEW WALLACE,
Of Counsel.

Lew Wallace, in behalf of defendants in the above-entitled cause, being duly sworn, says that he is of counsel for such defendants; that they are non-residents, except said Robert S. Foster, who has only a nominal interest in such cause as marshal, and that the demurrer to part of said bill is not interposed for delay, and that the facts set forth in the plea to part of said bill are true.

LEW WALLACE.

18 Subscribed and sworn to before me, this 5th day of November, 1883.

NOBLE C. BUTLER, *Clerk.*

And afterwards, to wit, on the 28th day of November, A. D. 1883, at the November term of said court, before the Honorable William A. Woods, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, William L. Hyde, Henry G. Hyde, Elisha P. Dodge, Henry B. Little, John W. Burt, Ferd. Packard, Augustus W. Clapp, Richmond Clapp, William H. Clapp, Walter W. Dennett, Savory C. Hathaway, Rufus A. Soule, Herbert A. Harrington, Cornelius Morrow, William O. Walker, George Strong, John Carroll, Walter M. Brewster, and Robert S. Foster, marshal of the United States for the district of Indiana, by Rooker & Hatch and William and Lew Wallace, their solicitors; and come now Adam Burgert and George W. Hart, by Harrison, Hines & Miller, their solicitors; Thomas M. Harris, John R. Pearl, and William Neilson, by Hammond & Bosson, their solicitors; Charles W. Copeland, by Ayres & Brown, his solicitors; Nathan Cox and George W. Hart, by Lucius B. Swift, his solicitor; Diddier Cattelier and Frank Cattelier, by McMaster & Boice, their solicitors; Lawrence Allison and Isaac Allison, by Taylor, Rand & Taylor, their solicitors; James Cousins, Thomas Cousins, James Cousins, Jr., and Joseph B. Cousins, by Daily & Pickerill, their solicitors; Cornelius Walker, by Dailey & Pickerill, his solicitors; Samuel Dunbar, Thomas C. Smith,
19 John James, and F. E. Lark, by Louis Howland, their solicitor; Ellis W. Ridpath and Leonidas H. Ridpath, by Lester

L. Norton, their solicitor; Edward L. Norris, by Horace Speed, his solicitor; Hugh Maguire and Jesse K. Green, by Horace Speed, their solicitor; William C. Herrick and William F. Freeman, by Horace Speed, their solicitor; Charles F. Cox, Barker C. Young, and John G. Gardner, by Horace Speed, their solicitor; Francis E. White, by McMaster & Boice, his solicitors; Charles Heiser, by Wilson & Wilson, his solicitors; the National Advertising Company, by Wilson & Wilson, its solicitors; Thomas Emerson and James F. Emerson, by Florea & Wishard, their solicitors; Harriet E. Ide and Oscar F. Wilson, by Morris & Newberger, their solicitors; E. K. Alexander, by William A. Van Buren, his solicitor; Joseph K. Hays, Jr., and A. W. Gage, by Rooker and Hatch, their solicitors.

And each for himself appearing waives the issuing and service of subpœna by within appearance in the words and figures following, to wit:

We, the undersigned attorneys, appear for the several defendants as below set forth, and such defendants do waive the issuing and service of process of subpœna: Rooker and Hatch, and William and Lew Wallace, for William L. Hyde, Henry G. Hyde, Elisha P. Dodge, Henry B. Little, John W. Burt, Ferd. Packard, Augustus W. Clapp, Richmond Clapp, William H. Clapp, Walter W. Dennett, Savory C. Hathaway, Rufus A. Soule, Herbert A. Harrington, Cornelius Morrow, William O. Walker, George Strong, John Carroll, Walter M. Brewster, and Robert S. Foster, marshal for the district of Indiana; McMaster and Boice, for Diddier Catellier and Frank Catellier, and Francis E. White; Daily & Pickerell, attorneys for Cornelius Walker, James Cousins, Thomas Cousins, James Cousins, Jr., and Joseph B. Cousins; Wilson and Wilson, solicitors for Charles Heiser and the National Advertising Company; Taylor, Rand and Taylor, solicitor for Lawrence Allison and Isaac Allison; Ayres & Brown, solicitors of Charles W. Copeland; Lucius B. Swift, solicitors for Nathan B. Cox and George W. Hart; Harrison, Hines & Miller, solicitors for Burgert & Hart; Florea & Wishard, solicitors for Thomas Emerson and James F. Emerson; Morris and Newberger, attorneys for Harriet E. Ide and Oscar T. Wilson; William A. Van Buren, solicitor for E. K. Alexander; Louis Howland, att'y for Samuel Dunbar, Thomas E. Smith, John James, and F. E. Lark; Horace Speed, for def'ts, Edward L. Norris, Hugh McGuire, Jesse K. Green, William C. Herrick, Wm. F. Freeman, Charles F. Cox, Barker C. Young, and John G. Gardner.

And come now the parties, plaintiffs and defendants, by their respective counsel and by agreement and with the permission of the court, the defendants, William L. Hyde, Henry G. Hyde, Elisha P. Dodge, Henry B. Little, John W. Burt, and Fred. Packard, Augustus W. Clapp, Richmond Clapp, William H. Clapp, Walter W. Dennett, Savory C. Hathaway, Rufus A. Soule, Herbert A. Harrington, Cornelius Morrow, William O. Walker, George

21 Strong, John Carroll, Walter M. Brewster, and Robert S. Foster, marshal of the United States for the district of Indiana, now withdraw their demurrer to part of complainant's bill of complaint and plea to part of said bill.

And now come all the defendants herein, except Lewis C. Frey and Jacob C. Maag, and by permission of the court first obtained, file their joint and several demurrer to the bill of complaint of said complainant, which demurrer is in the words and figures following, to wit:

The demurrer of the defendants, except Lewis C. Frey and Jacob C. Magg to the bill of complaint of Charles H. Krippendorf, the above-named complainant:

The defendants, except Louis C. Frey and Jacob C. Maag, by protestation, not confessing all or any of the matters and things in the complainant's bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, do jointly and severally demur to the whole of the complainant's bill.

And for cause of demurrer to said bill the said defendants show that the said bill doth not contain any matters of equity wherein this court can ground any decree or give to the said complainant any such relief as prayed for against these defendants, or any of them, and that it is against the course and practice, and not within the jurisdiction of this court, to interfere or afford such relief against the execution of the writ and judgment of attachment. And, for a further cause of demurrer to the complainant's bill, the said
22 defendants show that the said complainant has not, by his said bill, shown such a case as entitles him to such relief as thereby prayed, inasmuch as it does not thereby appear that there was any impediment to an action at law being brought by the said complainant to establish his right and that of these defendants to the property seized under the writ of attachment in the action aforesaid, and taken by the said defendant under the bond recited in the said bill, or that in any trial or action verdict or judgment has been hitherto obtained by the said defendant for that purpose, so that there was previous to, or at the time the said bill was filed, or now is, an authentic record of such right.

And for further cause of demurrer to the said complainant's bill, these defendants show that the said complainant has not, by his said bill, shown such a case as entitles him to such relief as is thereby prayed, inasmuch as it appears in said bill that the said complainant could have brought an action at law to establish his right to the property seized under the writ of attachment in the action aforesaid at the time or immediately after the execution of the bond recited in the said complainant's bill of complaint, and before all or any part of such property had been sold or converted into money, and does not appear in such bill that that there was any impediment to such action, or any excuse or reason why the said complainant

should not have brought the same and establish his title by
23 an action at law as he should have done, his remedy in such action at law being perfect, complete, and adequate, and it is against the course in practice, and not within the jurisdiction of this court to interfere or afford relief in such matters until the right of the complainant is established by such an action at law.

And for further cause of demurrer to the said complainant's bill, these defendants show that the said complainant has not, by his said bill, shown such a case as entitles him to such relief as is thereby prayed, inasmuch as it appears in said bill that the said complainant could have brought or now can bring an action at law for damages for the seizure of the property described in said bill, which property is claimed by said complainant to be his own, and as shown in said bill was seized by the defendant, Robert S. Foster, marshal, under a writ of attachment against the property of said defendants, Frey and Maag, and it does not appear in such bill that there was or is any impediment to such action, or any reason why said complainant should not have brought or should not bring the same, his remedy in such action at law being perfect, complete, and adequate.

Wherefore, and for divers other good causes of demurrer in the said bill, the said defendants do demur to the same, and humbly demand a judgment of this court, whether they, or any of them, shall be compelled to make any further or other answer to said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

24 ROOKER AND HATCH,
WILLIAM & LEW WALLACE,
Solicitors for Defendants.

DAILY AND PICKERILL,
HARRISON, HINES AND MILLER,
LUCIUS B. SWIFT,
AYRES AND BROWN,
TAYLOR, RAND AND TAYLOR,
McMASTER AND BOICE,
LESTER L. NORTON,
LOUIS HOWLAND,
HORACE SPEED,
FLOREA AND WISHARD,
WILSON AND WILSON,
MORRIS AND NEWBURGER,
and WILLIAM A. VAN BUREN,
Of Counsel.

UNITED STATES OF AMERICA, } *ss:*
District of Indiana, }

Lew Wallace, of counsel for the defendants in the within entitled cause, being duly sworn, says that the within demurrer is not inter-

posed for delay, and that he believes that said demurrer is well founded in point of law.

LEW WALLACE.

Subscribed and sworn to before me this 27th day of November, 1883.

NOBLE C. BUTLER, *Clerk.*

And come now the defendants, Lewis C. Frey and Jacob I. Maag, by Oliver M. Wilson, their solicitor, and waiving the issuing
25 and service of subpœna, fill their disclaimer in the words and figures following, to wit:

These defendants say that they have not and do not claim any interest in any of the matters in question in this suit, and disclaim all right, title, and interest, legal and equitable, in any of said matters; and they further say that if they had been applied to by the complainant before the filing of this bill, they would have disclaimed all such right, title, and interest, and they therefore submit that the said bill ought to be dismissed as against them with costs.

OLIVER M. WILSON,
Solicitors for Def'ts Frey & Maag.

And with the consent of complainant, it is thereupon ordered that the complainant's bill stand dismissed as to said Jacob I. Maag and Lewis C. Frey, without costs.

And the demurrer put in by all the defendants, except Lewis C. Frey and Jacob I. Maag, to the whole of complainant's bill of complaint, coming on for a hearing at this term, an argument being had, and counsel for the plaintiff and for the defendants being heard, thereupon on consideration this court held the said demurrer to be good and sufficient, and it is therefore ordered, adjudged, and decreed, by the court that the said demurrer do stand and be allowed, and that the complainant's bill do stand dismissed out of this court with costs for the defendants, but without prejudice to any
26 right of action said compainant may have in a court of law on account of the matters contained in his said bill of complaint. To all of which the complainant at the time excepts, and prays an appeal to the Supreme Court of the United States, which is hereby granted upon the condition that the said complainant execute his bond with surety to the approval of the court, conditioned for the payment of all damages and costs herein.

And the said complainant now tenders his bond, conditioned as aforesaid, with D. V. Burns as his surety, and the same is now hereby approved.

[Here follows the opinion of the court herein.]

Demurrer to Bill.

Hyde and others sued out of this court an attachment against the goods of Frey & Maag; the marshal levied upon a stock of

merchandise in possession of the plaintiff, Krippendorff, who executed to the officer a delivery bond conditioned as required by sec. 924, R. S., Indiana, 1881, and thereby retained possession, and afterwards disposed of the goods as his own.

The plaintiffs in attachment recovered judgment, and an order for the sale of the goods, and application of the proceeds to the payment of the judgment.

The defendants in attachment filed a motion for a new trial, and this motion is pending undisposed of. After the rendition of this judgment, Krippendorff paid to the marshal the appraised
27 value of the attached goods, to wit, $13,165.64, and immediately filed this bill against the marshal and the parties to the attachment proceedings, alleging, in substance, in addition to the aforenamed facts, that he had purchased the goods of Frey and Maag in good faith, and for value before the issue of the writ of attachment, and consequently as owner of the goods was entitled to the money which he had paid to the marshal. Prayer for temporary and permanent injunction, and that the money be declared his and ordered paid over to him.

The defendants demur for want of equity.

The opinion in Freeman *vs.* Howe, 24 How., 450, is cited in support of the bill, and indeed, contains remarks to the effect that persons interested in the possession of property in the custody of the court, may, by petition, make themselves so far parties to the proceedings as to have their interests protected, although the persons representing *adverse* interests in such case do not possess the qualification of citizenship necessary to enable them to sue each other in the Federal courts.

But in the later case of Buck *vs.* Colbath, 3 Wall., 345, speaking directly upon this point and in reference to what is said in Freeman *vs.* Howe, the Supreme Court says:

"The proceeding here alluded to is one unusual in any court, and is only to be resorted to in the Federal courts in extraordinary cases when it is essential to prevent injustice by an abuse of the process of the court, which cannot be otherwise remedied."

28 In this as well as in later cases it is decided that the injured party, whose goods have been wrongfully seized upon process of execution or attachment against another may have in any court of competent jurisdiction, whether State or Federal an action of trespass; and notwithstanding, under the doctrine of Freeman *vs.* Howe, the plaintiff could not in the State court *have* obtained a writ of replevin against the marshal, I perceive no reason why he might not have pursued that remedy in this court.

Such suit would have involved no conflict of jurisdiction; besides Buck *vs.* Colbath, see Watson *vs.* Jones, 13 Wall., 716; Christmas *vs.* Russell, 14 Id., 82; Amos *vs.* Meyers, 16 How., 492; Freeland

vs. Reynolds, 16 Md., 416; Lewis *vs.* Levi, 16 Md., 95; Freeman Executions, p. 437; Drake on Attachments, p. 340.

The right asserted by the plaintiff is a purely legal one, and in the absence of any reason shown or suggested, for resorting to a court of chancery should be determined and enforced in a court of law.

Demurrer sustained.

29 UNITED STATES OF AMERICA, } *ss:*
District of Indiana, }

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true, and complete transcript of the cause of Charles H. Krippendorff *vs.* William L. Hyde, *et al.*, No. 7705, as fully as the same appears of record, and on file in my office.

Witness, my hand and the seal of said court, at Indianapolis, in said district, this 3d day of December, A. D. 1883.

[SEAL.] NOBLE C. BUTLER, *Clerk.*

CHARLES H. KRIPPENDORF }
vs. } No. 7705.
WILLIAM L. HYDE, *et al.* }

The undersigned counsel for the respondents hereby waived the issuance and service of citation, this 5th day of December, 1883.

LEW WALLACE,
Of Counsel.

Endorsed on cover: Indiana C. C. U. S. No. 1227. Charles H. Krippendorf, appellant, *vs.* William L. Hyde, *et al.* Filed 10th December, 1883.

110-276

OFFICE SUPREME COURT U. S.
FILED
DEC 10 1883
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

CHARLES H. KRIPPENDORF, *Appellant*,
vs.
WILLIAM L. HYDE *et al*, *Appellees*.
} No.—

BRIEF AND ARGUMENT FOR APPELLANT.

D. V. BURNS,
Of Counsel for Appellant.

CARLON & HOLLENBECK, PRINTERS.

Supreme Court of the United States.

CHARLES H. KRIPPENDORF, *Appellant*,
vs.
WILLIAM L. HYDE *et al*, *Appellees*. } No.—

BRIEF AND ARGUMENT FOR APPELLANT.

I.

STATEMENT OF THE CASE.

May it please the Court: This is an appeal from the order and judgment of the Circuit Court of the United States for the District of Indiana, sustaining a demurrer to and dismissing a bill of complaint, or petition, filed by the appellant against the appellees.

The substantial allegations of the bill, or petition, are these: That on the —— day of September, 1882, the defendants, William L. Hyde and Henry G. Hyde, began a suit upon the law side of said court against the defendants,

Frey and Maag, to recover upon a mercantile account, and that contemporaneously therewith they sued out a writ of attachment, and caused the same to be levied on a certain stock of boots and shoes situate in the city of Indianapolis, by the defendant Robert S. Foster, marshal of said court, who caused the same to be appraised, as required by the statutes of Indiana, and the rules of said court. That said stock was appraised at the sum of $13,165.64.

That complainant, claiming to have been the owner of said stock of boots and shoes, and to have been in possession thereof at the time said writ of attachment was levied, caused to be executed to said marshal a delivery bond, pursuant to section 924 of the Revised Statutes of Indiana, and thereupon the same was delivered to him.

That thereafter complainant was, on his own motion, admitted as a party defendant to said suit, and set up his claim and title to said stock of boots and shoes, by way of defense to said proceeding in attachment.

That subsequently thereto, upon the motion of the plaintiffs therein, his name as a party defendant was, over his objections, stricken from the record without prejudice to his right to assert his claim in some other form.

That the other defendants to the bill, or petition, except the defendants Frey and Maag, filed under the suit of Hyde *et al*, and thereby became parties to said proceedings.

That the issues in said suit joined between the said several claimants and the defendants Frey and Maag were afterwards submitted to a jury, who returned a verdict in favor of the claimants for the amount of their respective claims, and found the issue in attachment in their favor.

That afterwards, to wit, on the 1st day of October, 1883, the said court rendered judgment in said cause in favor of the several claimants, pursuant to the said verdict (specifying the exact amount found due to each one) and at the same time ordered the attached property to be sold, as the

property of the said Frey and Maag, for the purpose of satisfying the said several judgments.

That a motion for a new trial upon the issues in attachment was filed in said cause by the said Frey and Maag and is still pending and undisposed of, an order having been entered by said court that said property shall not be sold by the marshal until after said motion shall have been heard and determined.

That, upon said property being delivered to complainant, and whilst he was still a party to said suit, he used and otherwise disposed of a large portion thereof, and was therefore unable to return the same to the marshal, but in lieu thereof paid to him the apparised value, to wit: $13,165.64.

That at the time said attachment proceedings were begun, complainant was the owner of all the property on which the said writ of attachment was levied, and which was delivered to him by virtue of the execution of said bond, and which is now represented by the said sum of $13,165.64, now in the hands of the defendant Foster as marshal of this court, and that neither the said Frey nor Maag had at that time any interest whatever therein.

That said sum of money is in the hands of the defendant Foster, as marshal, as aforesaid. That complainant has notified him of his title thereto and demanded a return thereof to him, which has been refused.

That the several claimants who obtained judgments are non-residents of the State of Indiana.

Prayer for an injunction, provisional and perpetual, prohibiting the marshal from paying the money over to the several claimants, and that upon final hearing the same be adjudged to be the property of complainant.

To this bill, or petition, the defendants Frey and Maag filed a disclaimer, and the cause as to them was dismissed.

The marshal and the other defendants, being the several judgment plaintiffs, demurred to the same for want of

equity. Their demurrer was sustained by the court and the bill was dismissed.

The opinion of the court is in the record.

II.

ASSIGNMENT OF ERROR.

The appellant avers that the Circuit Court erred in sustaining the demurrer of the appellees to his said bill, or petition, and in rendering judgment dismissing the same, and against this appellant for costs.

III.

ARGUMENT.

Section 924 of the Revised Statutes of Indiana, by virtue of which the delivery bond was executed, reads as follows:

> The defendant or any other person having possession of property attached may have the same, or any part thereof, delivered to him, by executing and delivering to the sheriff a written undertaking, with surety to be approved by the sheriff, payable to the plaintiff, to the effect that such property shall be properly kept and taken care of, and shall be delivered to the sheriff on demand, or so much thereof as may be required to be sold on execution to satisfy any judgment which may be recovered against him in the action, or that he will pay the appraised value of the property, not exceeding the amount of the judgment and costs.

It has been held that where a bond is given under this section of the statute, the lien of the writ of attachment is not thereby dissolved, that "the property is in the custody of the law," and that "the bond is not a substituted security for the property," and that "the property is to be returned to the sheriff."

Gass et al v. *Williams et al*, 46 Ind. 253.

Mr. Drake, in his work on Attachment, sec. 340, says:

"Where statutory provision is made, allowing a party

other than the defendant to retain attached property, on executing a forthcoming bond therefor, if such party claim to be the owner of the property, he must nevertheless return it to the officer, and then assert his claim. He can not set up his ownership as a defense to an action on the bond."

Following the rule thus laid down the appellant returned to the marshal, whilst the proceedings in attachment were still pending, the property attached, or what, under the statute, was the same thing, the appraised value thereof, and which had been theretofore delivered to him by virtue of the execution of the said bond. Having so returned it, appellant stood in the same attitude toward the property he would have occupied had he never executed the bond

In *Freeman* v. *Howe*, 24 How., on p. 460, this court, by Mr. Justice Nelson, said :

> Another misapprehension under which the defendant in error labors, and in which the court below fell, was in respect to the appropriate remedy of the plaintiffs in the replevin suit for the grievance complained of. It was supposed that they were utterly remediless in the Federal Courts, inasmuch as both parties were citizens of Massachusetts. But those familiar with the practice of the Federal Courts have found no difficulty in applying a remedy, and one much more effectual than replevin, and more consistent with the order and harmony of judicial proceedings, as may be seen by reference to the following cases: 23 How. 117. *Pennock et al.* v. *Coe; Robert Gue* v. *The Tide Water Canal Company*, decided this term; 12 Peters 164; 8 Ib. 1; 5 Cranch 288.
>
> The principle is, that a bill filed on the equity side of the court to restrain or regulate judgments or suits at law in the same court and thereby prevent injustice or an inequitable advantage under mesne or final process, is not an original suit, but ancillary and dependent, supplementary merely to the original suit, out of which it had arisen, and is maintained without reference fo the citizenship or residence of the parties.
>
> The case in the 8 Peters 1, which was among the first which came before the court, deserves, perhaps, a word of explanation. It would seem, from a remark in the opinion, that the power of the

court upon the bill was limited to a case between the parties to the original suit. This was probably not intended, as any party may file the bill whose interests are affected by the suit at law.

Following a rule of practice thus so plainly declared by the highest court in the world, appellant filed his bill, or petition, on the equity side of the court in which the proceedings in attachment were pending, and while the property was in the custody of the law and under the control of the court, asserting his title thereto, and praying for a hearing, and that until such hearing be granted the same be not distributed among the fifty-nine different claimants, all of whom are non-residents of Indiana.

But, as will be seen by referring to the opinion in the record, the court below held that the matter above quoted from the decision in *Freeman* v. *Howe* was mere *dictum*, the force and effect of which had been destroyed by the later case of *Buck* v. *Colbath*, 3 Wall. 345, and that "the right asserted by the plaintiff is a purely legal one, and in the absence of any reason shown or suggested for resorting to a court of chancery, should be determined in a court of law."

We think there is no conflict between the cases of *Freeman* v. *Howe* and *Buck* v. *Colbath*. *Freeman* v. *Howe* was replevin brought in a State court to recover the possession from a United States marshal of goods seized by him by virtue of a writ of attachment issued from a Federal court. The question was, whether the State court had jurisdiction, and this court decided it in the negative. But as it was urged in argument that if such be the rule, parties not possessing the requisite citizenship to enable them to maintain replevin in the Federal courts would be remediless, this court very properly held that such an argument was not well founded, and pointed out the proper remedy, basing it on the ground that such a suit is *ancillary* and not *original*, and may be resorted to where the property is in the custody of the law.

In *Buck* v. *Colbath* the party whose goods had been seized resorted to an action of trespass brought in a State court against the marshal, and the sole question raised was whether the State court had jurisdiction in that form of action. This court held that it had, but instead of disapproving the doctrine now invoked, laid down in *Freeman* v. *Howe*, as supposed by the learned judge who ruled on the demurrer in this case below, approved it. Note the language used at the close of the opinion:

"It is true that if under the intimations in *Freeman* v. *Howe* the claimant of the property had voluntarily gone before that court and asked by petition that the property be released from the attachment and restored to his possession, *he might have raised such issue*, and would have been bound by its decision." The italics are my own.

The appellant in this case did just the thing that this court, in *Buck* v. *Colbath*, said might be done. He went voluntarily before the court in which the proceedings in attachment were still pending, and while the property was still in the custody of the law and under the control of that court, and asked by petition that it be released from the attachment and restored to his possession. He also made every claimant of the property a party to his petition, so that they might assert their rights thereto, and not be left to the uncertainties of such defense as the marshal might choose to make, if sued alone in an action of trespass in a State court.

In the following cases *Freeman* v. *Howe* is cited in support of the rule that such a suit is *ancillary* and not *original*:

Railroad Companies v. *Chamberlain*, 6 Wall., 748.
Bank v. *Turnbull*, 16 Wall. 190.
Davis v. *Gray*, 16 Ib. 219.

And in the following cases it has been cited and approved as sustaining the doctrine here contended for:

Watson v. *Jones*, 13 Wall. 716, in which the court say:

"We are satisfied that it states the doctrine correctly." *Christmas* v. *Russell*, 14 Wall. 82, in which the court say: "The learned judge who delivered the opinion remarked that the marshal's possession might have been protected by a proceeding in equity. In that connection he made certain remarks which were entirely proper as regards the facts of the case before him, but it is a misapprehension to suppose they are of universal application, or that they can affect a case of the character of the one under consideration." And see *New Orleans* v. *Steamship Company*, 20 Wall. 392; *French, Trustee* v. *Hay*, 22 Wall. 252; *People's Bank* v. *Calhoun*, 102 U. S. 262; *Min. Co.* v. *St. Paul Co.*, 2 Wall. 632.

The learned judge, in his opinion sustaining the demurrer, refers to *Lewis* v. *Levy*, 16 Md. 85; *Freeland* v. *Reynolds, id. ib.* 416; *Amos* v. *Meyer*, 16 How. 492, in each of which it was held that an injunction will not lie to restrain proceedings on an execution levied on personal property claimed by the complainant under title from the party against whom the execution issued, for the reason that the remedy is at law. We assent to this doctrine, but it is wholly inapplicable to the present case, for the reason that in these cases the proceedings were *original* and not *ancillary*. This case is on all-fours with that of *Freeman* v. *Howe*, except as to the remedy pursued, and in this we have pursued both in letter and spirit, the course there so plainly declared to be correct, and therefore appeal strongly to this court for protection. Section 437, Freeman on Judgments, cited by the learned judge below in his opinion, taken in connection with the following section, sustains our view.

We respectfully ask a reversal.

D. V. BURNS,

Of Counsel for Appellant.

110-275

IN THE

Supreme Court of the United States

OF AMERICA.

CHARLES H. KRIPPENDORF,

vs.

WILLIAM L. HYDE, et al.

No. 1,227.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

BRIEF AND ARGUMENT FOR APPELLEES.

ROOKER & HATCH,
WM. & LEW WALLACE,
Solicitors for Appellees.

LEW WALLACE,
A. W. HATCH,
Of Counsel.

Hasselman-Journal Co. Print, Indianapolis.

UNITED STATES OF AMERICA.

IN THE

SUPREME COURT OF THE UNITED STATES.

CHARLES H. KRIPPENDORF,
Versus
WILLIAM L. HYDE, ET AL. } No. 1,227.

APPELLEE'S BRIEF.

May it please the Court: The question presented is as to the extent of the jurisdiction of a court of equity as ancillary to an action at law. The facts are simple, and the total absence of any special features makes it unnecessary for us to supplement the very full statement made by appellant's counsel. Krippendorf, complainant in the circuit court, sought equitable interference with the legal process of the same court in an action of attachment. He claims that a certain fund, in the hands of the marshal under the writ against Frey and Maag in that action, is his property, and prays that the same be delivered to him. An injunction restraining the marshal from paying the money to the plaintiffs, who obtained judgments in that cause, is also prayed. There is no claim of an equitable character in plaintiff's title to the fund. His rights to the property, in lieu of which it is held, were purely legal. The fund is money, and has no especial character; and there is no averment that the marshal is unable to respond in damages at law. The question, therefore, is of the most general character. Can

equity, in the exercise of the jurisdiction it has to supplement and restrain proceedings at law, interfere, in all cases, to protect the title of the owner of chattels seized under an attachment against the property of another?

In such cases, except as we note hereinafter, there is always a plain, adequate and certain remedy at law, either in replevin or trespass. Under the statutes of the State of Indiana, which would control in any action brought to recover the possession of the goods seized by the marshal, Krippendorf could have obtained the specific property and also damages for its detention.

Rev. Stat. of Indiana, 1881, *sec.* 1266.

That such an action would lie, see

Drake on Attachment, *sec.* 340.

Louthain v. *Fitzer*, 78 Ind. 449.

The excuse given in the bill for a failure to resort to this remedy is not sufficient. It seems that Krippendorf misunderstood his legal rights, and applied to be made party to the attachment suit for the purpose of there having his title determined.

Upon the authority of *Risher* v. *Gilpin*, 29 Ind. 53, and *Davis* v. *Warfield*, 38 *Id.* 461, his name was stricken from the record of that case. This pure mistake of law can not be made the basis for equitable relief.

Replevin was appellant's proper remedy. Still, in the abundance of legal redress, he is permitted a choice, and may now maintain, upon the facts averred, an action in trespass against the marshal for the wrongful seizure. There is no impediment to such proceedings shown, and no claim in the bill or in argument that the marshal is unable to respond in damages. Every presumption is against the marshal's financial irresponsibility. Consequently, the legal remedy is certain. Then is it adequate? The measure of damages at law would be the amount paid to the marshal; unless, indeed, something might also be allowed for injuries beyond this. The judgment would be that Krippendorf recover $13,165.64. The decree in chancery would be that the marshal pay Krippendorf $13,165.64. It seems to us not only that the legal remedy is adequate, but that the relief at law is the very same as the relief afforded by a court of equity. It is elementary that where the legal remedy is adequate and certain, equity has no jurisdiction.

Appellant's counsel attempt to break the force of this conclusion by insisting that, as the court of equity only supplements the proceedings at law, the usual prerequisites of original jurisdiction need not exist. This is true as applied to parties, but is far from true if made to govern principles. Observe the result of counsel's argument. An action at law could be controlled from the beginning to the end, and even after the end, by a court of chancery. There would be no certainty in legal proceedings, and no finality in a legal judgment. But this question has been so frequently passed upon by the majority of the appellate courts that argument is superfluous at this late day. We have selected from the vast number of cases upon this subject those similar to that under consideration. And we refer the court to such authorities with the conviction that this subject is no longer a matter for controversy.

Miller v. *Crews*, 2 Leigh, (Va.) 576.
Hamilton v. *Shrewsbury*, 4 Randolph, (Va.) 427.
Bowyer v. *Creigh*, 3 Randolph, (Va.) 25.
Allen v. *Freeland*, 3 Randolph, (Va.) 170.
Whitman v. *Willis*, 51 Texas, 429.
Henderson v. *Merrill*, 12 Texas, 1.
Davidson v. *Seegar*, 15 Florida, 671.
Akin v. *Davis*, 14 Kansas, 145.
Baker v. Rhinehard, 11 W. Va. 238.
Stilwell v. *Oliver*, 35 Arkansas, 184.
Sheldon v. *Stokes*, 34 N. J. Eq. 87.
Dawes v. *Taylor*, 35 N. J. Eq. 40.
Freeman v. *Elmendorf*, 3 Halsted Ch. (N. J.) 475, 655.
Greenup v. *Brown*, Breese, (Ills.) 194.
Baird v. *Freeman*, Breese, (Ills.) 303.
Cloughron v. *Swift*, 18 Illinois, 414.
Winch's Appeal, 61 Pennsylvania St. 424.
Imlay v. *Carpentier*, 14 California, 173.
Markley v. *Rand*, 12 California, 275.
Johnson v. *Bank*, 21 Connecticut, 148.
Watkins v. *Logan*, 3 T. B. Monroe, (Ky.) 21.
Bouldin v. *Alexander*, 7 Id. 425.
Hall v. *Davis*, 5 J. J. Marshall, (Ky.) 290.
Gumby v. *Bell*, 40 Georgia, 133.
McIndoe v. *Hazleton*, 19 Wisconsin, 596.

Macy v. *Lloyd*, 23 Indiana, 60.
Lewis v. *Levy*, 16 Maryland, 95.
Freeland v. *Reynolds*, 16 Id. 416.
Chappell v. *Fox*, 18 Id. 513.
Hammon v. *St. John*, 4 Yerger, (Tenn.) 107.
Du Pre v. *Williams*, 5 Jones, Eq. (N. C.) 96.
Howell v. *Howell*, 5 Iredel Eq. (N. C.) 258.

ENGLISH:—

Garstein v. *Asplin*, 1 Maddock Ch. 150.
Senier v. *Ross*, 1 Freeman Ch. 519.

If we understand counsel's argument correctly, he discriminates between the mesne and the final process of law so that chancery jurisdiction in one instance is ancillary, and in the other original. This distinction is made in the very teeth of the authorities cited by him. *Pennock* v. *Coe*, *Gue* v. *Tide Water Canal Company*, *Bank* v. *Chamberlain*, and other cases cited were all brought to restrain proceedings upon final process; see also *Dietsch* v. *Huidekoper*, 103 U. S. 494. In *Freeman* v. *Howe*, where the doctrine is stated, no such distinction was thought of. It was there said: "The principle is, that a bill filed on the equity side of the court to restrain or regulate *judgments or suits at law* in the same court, and thereby prevent injustice or an inequitable advantage *under mesne or final process*, is not an original suit, but ancillary and dependant, supplementary merely to the original suit," etc.

It is also insisted that this court has established a different rule from the one we have stated, although the statute provides that "suits in equity shall not be sustained in either of the courts of the United States in any cause where a plain, adequate and complete remedy may be had at law."

Rev. Stat. 1878, *sec.* 723.

We do not believe that this court has abrogated this statute, or is opposed to the current of authorities. It has been decided, however, that equity has jurisdiction ancillary to proceedings at law to be exercised in a proper case; but such interference is justifiable only upon well-settled principles, and only where it is necessary to prevent or redress a wrong which can not otherwise be completely remedied. We will not attempt an exhaustive classification of cases properly cognizable in chancery. The following instances will serve as illustrations of the rule: where the title to be protected

is of an equitable nature; where the chattels seized are of peculiar value, or have some special use to their owner, as heirlooms and valuable pictures; where a merchant's stock in trade is seized and there is danger of financial ruin to him; and where equity is invoked to prevent a cloud upon the title to real estate. In all cases the test applied is this: Is there a certain and adequate remedy at law? If there is not, equity will, of course, interfere to prevent an unconscionable use of legal proceedings. The principle is obvious, and underlies all equitable jurisdiction.

As the rule is thus defined it is supported by the opinion of this Court. In *Amis* v. *Myers*, 16 Howard, 492, a bill was filed to restrain the sale of slaves taken in execution of a judgment against Amis. The complainant claimed that the slaves belonged to her, and Myers claimed that they were the property of the judgment debtor. The Court said in the opinion:

"It is proper to notice this case is not one of equitable cognizance. The plaintiff had a clear and adequate remedy at law under the code of practice of Louisiana, C. P. 288, sec. 7.

"It is not usual for this court to take an exception of this nature on its own motion, and when no objection has been made by the defendant; but this case is one so clearly beyond the limits of the equitable jurisdiction of the circuit court that the fact is noticed that it may not serve as a precedent."

This dictum establishes beyond doubt that there must be some equitable basis for the ancillary jurisdiction of a court of chancery. *Amis* v. *Myers*, has never been doubted or criticised; and all subsequent decisions of this court are entirely in harmony with the doctrine there stated.

Freeman v. *Howe*, 24 Howard, 350, in the decision and in the dicta, is opposed in no particular to our position. Freeman, the marshal and plaintiff in error, had attached certain cars in an action against the Vermont and Massachusetts Railroad Company. Howe and other defendants in error replevied the cars from the marshal in the State court, claiming them under mortgages of the railroad company in trust for the bondholders. The question presented was as to the conflict of jurisdiction between the state and federal courts; and, after deciding that the state courts had no jurisdiction, Mr. Justice Nelson uses the language quoted in appellant's brief. We have no objection to what was said as applied to the facts of that

case, but we do object to a misconstruction of the language used and to an application of the doctrine to a case totally different from the one there passed upon. The learned judge points out that the parties, being citizens of the same state, were remediless at law. He then says that equity in the exercise of its ancillary jurisdiction will give aid to the injured party without requiring the qualification of citizenship in the parties necessary in an action at law. The reason is obvious, and it is equally manifest that it does not apply to the case under consideration; for Krippendorf is a citizen of the State of Ohio, and Foster, the marshal, is a citizen of the State of Indiana.

But the learned judge was not satisfied with placing the right to equitable relief upon this ground. Continuing from where counsel ends his quotation, he said: "In the case of *Pennock* v. *Coe*, the bill was filed by the mortgagees of the railroad company in trust for the bondholders, answering to the position of the plaintiffs in the replevin suit in the case before us. *Gue* v. *Tide Water Canal Company*, decided at this term, is an instructive case upon this subject, in which the Chief Justice suggests the difficulties of a court of law dealing with this description of property, with a proper regard to the rights of all concerned."

In *Pennock* v. *Coe*, 23 Howard 117, and in *Freeman* v. *Howe*, the complainants had equitable claims to the property and there was thus no doubt as to the jurisdiction.

In *Gue* v. *The Tide Water Canal Company*, 24 Howard, 257, the relief was granted because a court of law could not fully protect all interests.

Mr. Justice Nelson did not intend to make his remarks of universal application, but had in mind only the case before him.

This same comment has been made upon *Freeman* v. *Howe*, by this court, in *Buck* v. *Colbath*, 3 Wallace, p. 345, and *Christmas* v. *Russell*, 14 Wallace, p. 82.

In *Buck* v. *Colbath*, commenting upon what was said of equitable proceedings in *Freeman* v. *Howe*, this court said: "The proceeding here alluded to is one unusual in any court, and is only to be resorted to in the Federal Courts, in extraordinary cases where it is essential to prevent injustice by an abuse of the process of the court, *which can not otherwise be remedied.*"

In *Christmas* v. *Russell*, it was said: "The learned judge who delivered the opinion (in *Freeman* v. *Howe*) remarked that the marshal's possession might have been protected by a proceeding in equity. In that connection he made certain remarks which were entirely proper as regards the facts of the case before him, but it is a misapprehension to suppose that they are of universal application, or that they can affect a case of the character of the one under consideration."

Taking all these cases together we see nothing in them entrenching upon our position. The law, as well settled is, that to supplement proceedings at law, equity will only interfere in proper cases for equitable relief; and the test is whether the remedy at law is adequate and certain. That Krippendorf upon the facts stated in his bill has such remedy at law, is not an open question in this court. See *Buck* v. *Colbath*, and *Sharpe* v. *Doyle*, 102 U. S. 686.

We, therefore, respectfully submit that there was no equity in appellant's bill and that it was properly dismissed.

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